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MEMORANDUM

2007 MAR -9 P 3:32

TO: Docket Control

FROM: Ernest G. Johnson
Director
Utilities Division

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: March 9, 2007

RE: **COMMENTS - IN THE MATTER OF THE FORMAL COMPLAINT OF
ESCHELON TELECOM OF ARIZONA, INC. AGAINST QWEST CORPORATION
(DOCKET NOS. T-01051B-06-0257 AND T-03406A-06-0257)**

Background

Eschelon Telecom of Arizona, Inc. ("Eschelon"), a Competitive Local Exchange Carrier ("CLEC") authorized to provide facilities-based local telecommunications service in Arizona, filed a Complaint against Qwest Corporation ("Qwest"), an Incumbent Local Exchange Carrier ("ILEC"), on April 14, 2006 with the Arizona Corporation Commission ("ACC" or "Commission"). The Complaint addressed the alleged refusal by Qwest to provide repairs for disconnects in error and Qwest's alleged refusal to expedite orders for unbundled loops without Eschelon signing an amendment to the Qwest - Eschelon Interconnection Agreement imposing a \$200 per day expedite fee.

Staff filed Testimony in which it concluded that:

- (1) Qwest did not adhere to the terms and conditions of the current Qwest -Eschelon Interconnection Agreement, which allows Eschelon the capability to expedite orders, when Qwest denied this option without Eschelon signing an amendment to the Agreement. Qwest should continue to support the same Expedite Process that has been used in the past for all products and services (including unbundled loops) if the order meets any of the Emergency criteria or conditions or where the customer's safety may be an issue if the Expedite is not processed. No additional charge should be applied beyond the standard installation charge.
- (2) Qwest should continue with the enhancement to the Expedites & Escalations Overview Process, as originally requested by Covad, offering an option to CLECs to expedite Orders when the situation does not meet the emergency criteria or conditions. This option should be offered to all CLECs via an amendment to the CLEC's current Interconnection Agreement and may involve a charge when the option is utilized by the CLEC.

Arizona Corporation Commission

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- (3) The Qwest - Eschelon Interconnection Agreement does allow Qwest the ability to impose a fee on Eschelon for expediting orders. Until recently, common practice has been that Qwest has chosen not to charge an additional expedite fee for all products/services that met certain emergency conditions/criteria. Qwest should reimburse the additional \$1800 plus interest (if applicable) that was charged to Eschelon in this particular Complaint.
- (4) Due to the nature of this particular Complaint which stemmed from an Eschelon caused error in disconnection of an incorrect number, Eschelon should implement a training or refresher training program for its representatives stressing the importance of accuracy when ordering changes to their customers' service in order to try to avoid or minimize unnecessary customer service outages.
- (5) Qwest should include a definition of designed and non-designed services in its Arizona tariffs.
- (6) Qwest and the CLECs should include expedites of the installation of Unbundled Loops in their Interconnection Agreement negotiations.
- (7) Staff recommends that a performance measurement for expedites of Unbundled Loops be developed through CMP and that the rate(s) for expedites be considered as part of the next cost docket.

Summary of the Settlement Agreement

On February 23, 2007, Eschelon Telecom of Arizona, Inc. and Qwest Corporation jointly submitted a Settlement Agreement. The parties agreed that:

For the length of time that the current interconnection agreement between Qwest and Eschelon (approved by the Arizona Corporation Commission on or about April 28, 2000) remains the binding interconnection agreement between the parties in Arizona, Qwest agrees to interpret the expedite provisions of the Parties' current interconnection agreement to allow Eschelon in the state of Arizona to obtain expedited due dates on all products, including unbundled loops and other products categorized by Qwest as "designed services" according to the Expedites Requiring Approval process, pursuant to which Qwest will grant Eschelon's requests for an expedite, at no non-recurring charge (other than any applicable installation charge), under the following conditions:

- Fire;
- Flood;
- Medical emergency;
- National emergency;

- Conditions where Eschelon's end-user is completely out of service (primary line);
- Disconnect in error by Qwest;
- Requested service necessary for Eschelon's end-user's grand opening delayed for facilities or equipment reasons with a future RFS date;
- Delayed orders with a future RFS date that meets any of the above-mentioned conditions;
- National security;
- Business classes of service are unable to dial 911 due to previous order activity;
- Business classes of service where hunting, call forwarding, or voice mail features are not working correctly due to previous order activity where the end-user's business is being critically affected.

In addition, the Settlement Agreement contained the following provision:

In exchange for Qwest's agreement to act in accordance with paragraphs A.1 and A.2 of this Agreement, Eschelon agrees to dismiss its complaint (Docket Nos. T-01051B-06-0257 and T-03406A-06-0257) against Qwest with prejudice.

Staff Comments

Section B.1. of the Settlement Agreement states the following:

Staff to the Arizona Corporation Commission intervened in the complaint case brought by Eschelon (Docket Nos. T-01051-06-0257 and T-03406A-06-0257) and filed written testimony.

Staff would note that by Procedural Order dated June 6, 2006, Staff was required to file testimony in the proceeding.

Staff has concerns with Section B.2.2 of the Settlement Agreement. It states the following:

If the Staff files comments that recommend additional conditions, Qwest and Eschelon may modify the Settlement Agreement, retain all aspects of the Settlement Agreement, or may opt out of the Settlement Agreement and proceed forward with a hearing on the merits in this case. Qwest and Eschelon shall have 10 calendar days after receipt of Staff's comments to state whether they will opt out of or otherwise modify the Settlement Agreement. If Qwest or Eschelon indicates a desire to amend the Settlement Agreement, the Parties are not required to extend the 10-day period but may agree to do so to allow time for discussion of the terms of a potential amendment. If neither Qwest nor Eschelon opts out of the Settlement Agreement or indicates a desire to amend it within 10 calendar days, this Settlement Agreement is deemed binding on the Parties,

again subject to the Arizona Corporation Commission dismissing the case with prejudice subject to the terms of this Settlement Agreement.

Staff's concern is related to the intent of the provision. Specifically, Staff is concerned that the intent of the provision could be to prevent Staff from providing recommendations to the Commission that are consistent with the public interest. Staff recommends that this provision be removed from the Settlement Agreement.

As stated previously, Staff concluded in its Testimony and continues to believe that Qwest should continue to support the same Expedite Process that has been used in the past for all products and services (including unbundled loops) if the order meets any of the Emergency criteria or conditions or where the customer's safety may be an issue if the Expedite is not processed. Staff continues to support its conclusion.

Staff believes that the Settlement Agreement could be in the public interest if it includes the following Staff recommendations:

- (1) Qwest should continue to support the same Expedite Process that has been used in the past for all products and services (including unbundled loops) if the order meets any of the Emergency criteria or conditions or where the customer's safety may be an issue if the Expedite is not processed. No additional charge should be applied beyond the standard installation charge.
- (2) Qwest should continue with the enhancement to the Expedites & Escalations Overview Process, as originally requested by Covad, offering an option to CLECs to expedite Orders when the situation does not meet the emergency criteria or conditions. This option should be offered to all CLECs via an amendment to the CLEC's current Interconnection Agreement and may involve a charge when the option is utilized by the CLEC.
- (3) Qwest should reimburse the additional \$1800 plus interest (if applicable) that was charged to Eschelon in this particular Complaint.
- (4) Due to the nature of this particular Complaint which stemmed from an Eschelon caused error in disconnection of an incorrect number, Eschelon should implement a training or refresher training program for its representatives stressing the importance of accuracy when ordering changes to their customers' service in order to try to avoid or minimize unnecessary customer service outages.
- (5) Qwest should include a definition of designed and non-designed services in its Arizona tariffs and interconnection agreements.

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- (6) Staff recommends that a performance measurement for expedites of Unbundled Loops be developed through CMP and that the rate(s) for expedites be considered as part of the next cost docket.

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Originator: Pamela Genung

SERVICE LIST FOR: ESCHELON TELECOM OF ARIZONA, INC. vs QWEST
CORPORATION

DOCKET NOS.: T-01051-06-0257 and T-03406A-06-0257

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